

-WORKING DRAFT -

**PROJECT CONDITIONS OR ACTIONS THAT QUALIFY AS
“NO EFFECT” ON LISTED OR PROPOSED T&E FISH
OR THEIR CRITICAL HABITAT IN WASHINGTON STATE
UNDER THE ENDANGERED SPECIES ACT¹
(All Fresh Waters, *including* Columbia River & Baker Bay)**

1. No listed fish or fish proposed for listing, or their forage base, or designated or proposed critical habitat occur in the waterbody where work is to occur, and work will not result in short- or long-term water quality or quantity impacts which may affect listed or proposed species or their forage base downstream of the project site. This condition applies to all fresh waters of the U.S., including wetlands, and includes all isolated waters or wetlands.
2. For salmon and steelhead: Work that occurs as part of a single and complete project that is 300 feet or more away from a water of the U.S. which may contain listed fish or fish proposed for listing, including intermittent streams and adjacent wetlands, and work will not result in short- or long-term water quality or quantity impacts which may affect listed or proposed fish species or their forage base downgradient of the project site. The 300-foot measurement is a horizontal measurement from the ordinary high water (OHW) mark (or top of the bank if an OHW mark is not observable), and does not take topography into account.
3. For bull trout: For streams and rivers: Work that occurs as part of a single and complete project that is beyond the edge of the channel migration zone (CMZ) of streams and rivers which may contain listed fish or fish proposed for listing (including intermittent streams) plus one site-potential tree height, or that is 300 feet or more away from a water of the U.S., whichever is the greater distance, and work will not result in short- or long-term water quality or quantity impacts which may affect listed or proposed fish species or their forage base down-gradient of the project site. For the purposes of this determination, site-potential tree height shall be defined as 130 feet for areas east of the Cascade crest and 200 feet for areas west of the Cascade crest. The 300-foot measurement is a horizontal measurement from the ordinary high water (OHW) mark (or the top of the bank if an OHW mark is not

¹ Based on available literature [50 CFR Part 226, FR Vol. 65, No. 32], the Corps' Seattle District, Regulatory Branch, notes that a 300-foot riparian area should provide a high level of protection for these species and their critical habitat under the Endangered Species Act (ESA). This “No Effect” list is meant to cover those single and complete projects that meet the stated criteria. For projects that do not meet these criteria the applicant should contact the Corps for a case-by-case determination of effect under the ESA. Such projects may still qualify for a “No Effect” determination on an individual basis. This list does not represent any finding regarding the Clean Water Act, the Rivers and Harbors Act, nor any Federal law other than the ESA.

observable), and does not take topography into account. For lakes and other waters: Work that occurs as part of a single and complete project that is 300 feet or more away from a lake or other water of the U.S. which may contain listed fish or fish proposed for listing, including wetlands, and work will not result in short- or long-term water quality or quantity impacts which may affect listed or proposed fish species or their forage base down-gradient of the project site. The 300-foot measurement is a horizontal measurement from the ordinary high water (OHW) mark (or the top of the bank if an OHW mark is not observable), and does not take topography into account.

4. Replacement of decking, rails, stringers, or other above-water parts on serviceable structures in navigable waters, provided that: any stain, paint, or preservatives to be applied on such components is completely dry/cured prior to installation, creosote and pentachlorophenol preserved wood will not be used, and no material shall enter the waterbody during the removal of decking, etc. [work typically allowed under Nationwide Permit 3]
5. Replacement of floats, provided that: replacement float is no larger and within the same footprint as the original float; only the over-water float is replaced and the original anchor system remains in place; the float is unchained from the anchor, moved onshore and new replacement float is placed in the water fully intact and chained to the existing anchor; any stain, paint, or preservatives to be applied onto the float is done while the float is on the land and all treatments are completely dry/cured prior to returning the float to the water; and the flotation is fully contained in a rigid protective casing. [work typically allowed under Nationwide Permit 3]

(NOTE: The EPA/Corps jurisdiction under the Clean Water Act generally does not extend to: artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; nor artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; nor to waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the U.S. Additionally, construction or maintenance of farm or stock ponds is exempt from needing a Corps permit, as is construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S.)